



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 26th day of July, 1996

SERVED: July 26, 1996

Complaint of
UNITED AIR LINES, INC.

against
THE GOVERNMENT OF INDONESIA

under 49 U.S.C. section 41310

Docket OST-96-1586

Complaint of
NORTHWEST AIRLINES, INC.

against
THE GOVERNMENT OF INDONESIA

under 49 U.S.C. section 41310

Docket OST-96-1547

ORDER SEEKING COMMENTS AND CONSOLIDATING PROCEEDINGS

On July 23, 1996, United Air Lines, Inc. (United), filed a complaint under 49 U.S.C. section 41310 against the Government of the Republic of Indonesia (Indonesia). United states that Indonesia has refused to authorize United's proposed San Francisco-Osaka-Jakarta service in violation of the U.S.-Indonesia Air Transport Agreement.

In support of its complaint, United states that it holds the necessary operating authority from the Department to operate its proposed San Francisco-Osaka-Jakarta service; that it was designated by the United States government to provide this service in April 1996 and planned to commence its San Francisco service on August 5, 1996, operating a pattern of three weekly flights; that although Indonesian officials were initially receptive to its service, it was informed on June 7, 1996, that its Indonesian operating authority would not be granted because two other U.S. carriers were already authorized by Indonesia to serve the U.S.-Indonesia market. United argues that there are no provisions in the U.S.-Indonesia aviation agreement that permit the Indonesian government to limit the number of U.S. carriers that may be designated, and, thus, that Indonesia's failure to authorize

United's service violates the provisions of the U.S.-Indonesia aviation agreement and warrants approval of its complaint under the statute. ¹

United notes that Northwest has also filed a formal complaint against Indonesia concerning Indonesia's failure to authorize Northwest's Osaka-Jakarta services and has proposed sanctions that would require Garuda Indonesian Airlines to cancel its five weekly flights between the United States and Indonesia (Docket OST-96-1547). United states that it concurs with Northwest's proposed sanction and urges the Department to issue an order proposing such a sanction in response to both carriers' complaints and to seek consultations with Indonesia in an effort to reach a satisfactory resolution to the issues raised. ²

Section 41310 provides that we shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite any interested persons to answer United's complaint in Docket OST-96-1586. In this regard, in a separate motion filed contemporaneously with its complaint, United requests that the Department consolidate its complaint with the complaint filed by Northwest and that we establish the same procedural dates for answers and replies, August 1 and August 6, respectively, as set forth in Order 96-7-26 for Northwest's complaint. United states that both complaints involve nearly identical facts and arise from similar action by the Indonesian government, and that due process requires contemporaneous consideration of the complaints to ensure that the issues raised in both complaints are considered in the same intergovernmental consultations on this issue. ³

We have decided to grant United's request for contemporaneous consideration of its complaint with the complaint of Northwest as well as its request for a common procedural schedule for the two complaints. We believe that consolidation of the complaints will facilitate our consideration of the issues raised and is warranted given the circumstances. ⁴ Therefore, we will require that any answers to United's complaint be filed by August 1, 1996, and that any replies be filed by August 6, 1996, the same dates that we are requiring answers to Northwest's complaint. ⁵ We believe these dates provide all interested parties a reasonable opportunity to answer the complaint and that no

¹ United states that as a result of Indonesia's action, it has had to postpone the start up of its service from August 5 to October 1, 1996. Complaint of United at 2.

² United states that since it has been precluded from operating its three proposed flights and Northwest has been precluded from operating its three proposed flights, a sanction prohibiting Garuda Indonesia's five weekly flights is a proportional sanction. United suggests that the sanction be scheduled to take effect after a period that affords the two governments a reasonable period of time to reach a satisfactory resolution.

³ Specifically, absent consolidation of the complaints, United states that the imposition of sanctions in response to the Northwest complaint would effectively preclude sanctions in response to the United complaint since there is only one Indonesian airline serving the United States and it operates only five weekly flights between the United States and Indonesia.

⁴ Answers to United's motion for consolidation would normally be due August 1. Given our desire to complete a record on both the United and Northwest complaints quickly, we have decided to act on United's motion without awaiting expiration of answers to the motion. To the extent that answers to the motion are filed, we will consider those answers in a subsequent order.

⁵ Interested parties filing answers or replies may consolidate their comments into one pleading, but should caption both complaints and docket numbers in their pleadings.

party will be prejudiced by the procedural schedule established. Answers filed should include all data, evidence, and arguments upon which the respondents rely to support their positions, and should cover all substantive and procedural issues that they wish the Department to consider. ⁶

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order regarding the complaints.

ACCORDINGLY,

1. We invite interested persons to file answers to the complaint of United Air Lines, Inc., in Docket OST-96-1586 no later than August 1, 1996. ⁷ If answers are filed, replies to those answers should be filed no later than August 6, 1996. Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 4, below;

2. If timely and properly supported answers are filed, we will give consideration to the matters and issues raised by the answers before we take further action;

3. We grant the July 23, 1996, motion of United Air Lines, Inc. for contemporaneous consideration of its complaint in Docket OST-96-1586 with the complaint of Northwest Airlines, Inc., in Docket OST-96-1547; and

4. We will serve this order on United Air Lines, Inc.; Northwest Airlines, Inc.; Aloha Airlines, Inc.; American Airlines, Inc.; Amerijet International, Inc.; Continental Airlines, Inc.; Continental Micronesia, Inc.; Delta Air Lines, Inc.; Emery Worldwide Airlines; Evergreen International Airlines; Federal Express Corporation; Hawaiian Airlines, Inc.; Polar Air Cargo, Inc.; Trans World Airlines, Inc.; United Parcel Service, Inc.; World Airways, Inc.; Garuda Indonesian Airlines; Japan Air Lines Company, Ltd.; Nippon Cargo Airlines Company, Ltd.; City and County of San Francisco (Director of Airports); the City of Seattle; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Asia), the Office of the United States Trade Representative; the United States Department of Commerce (Office of Service Industries); the Ambassadors of Indonesia and Japan in Washington, D.C.; and the Air Transport Association.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*

⁶ We assign to the Director, Office of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearing, until further Department order.

⁷ Responding parties should file an original and five copies with the Documentary Services Division, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590. The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green).

